IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 46 OF 2002.

Smt. Shubhangi Subhash Naik,
housewife, r/o Housing Board
Colony, Gogal, Margao, Goa. ... Petitioner.

Versus

Shri Subhash Vishwanath Naik,
service, r/o Thork Bhat,
Dongri, Ilhas Goa. ... Respondent.

Mr. F. Tavora, Advocate for the Petitioner.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 8th August 2002.

ORAL ORDER.

This is an application for leave to file an appeal against acquittal, accompanied by memorandum of appeal, against the Judgment of the Sessions Judge, North Goa, Panaji, dated 9th November 2001, in Criminal Appeal No. 15 of 2000, acquitting the present respondent for an offence punishable under Section 494 of the Indian Penal Code. The learned Judicial Magistrate, First Class, Panaji, by his Judgment dated 17th May 2000, in Private Criminal Case No. 209/96/B, had convicted the present respondent for an offence punishable under Section 494 of the Indian Penal Code and had sentenced him to undergo simple imprisonment for one year and to pay fine of Rs. 5,000/-. I had called for the records and proceedings. Mr. Tavora, the learned counsel for the petitioner, has urged

before me that the learned lower appellate Court has acquitted the present respondent on the grounds (1) that the entry in the register by P.W.2 Chandrakant Khanolkar has been made on the basis of the information supplied by P.W.3 Govind Patankar, who, admittedly, was not the priest, who had solemnised the marriage. The entry in the register at Exhibit 25 has, therefore, no evidentiary value and (2) there is no evidence that the essential religious ceremony of Saptapadi had been performed.

2. The learned counsel appearing for the petitioner/complainant has referred to the Judgment of the Apex Court in **Sumitra Devi v. Bhikan Choudhary,** A.I.R. 1985 S.C. 765 to urge that the appeal be admitted and the case be remanded to the learned Judicial Magistrate, First Class for giving an opportunity to the petitioner/complainant to lead evidence regarding the performance of Saptapadi. Reliance is placed on the observations of the Apex Court in paragraphs 3 and 5 of the report. This is a case under Section 125 in which the Apex Court has observed that there can be a marriage acceptable in law according to the customs which do not insist on the performance of the rites which give rise to legal relationship which the law accepts. The Apex Court also took into consideration that the parties had lived

together for about a decade and the public records including the voters' list described them as husband and wife and the evidence of the witnesses of the village supported the factum of marriage. In the peculiar facts of that case, therefore, the Apex Court in paragraph 5 of the report remitted the matter to the original Court giving an opportunity to the parties to lead evidence. The facts of the case which is cited before me is clearly distinguishable. In the present case the other corroborative evidence is totally absent and, therefore, apart from the fact that the respondent has been acquitted, the ratio of the Judgment of the Apex Court does not apply to the facts of the present case.

3. The learned counsel appearing for the petitioner/complainant has also placed reliance on the Judgments of the learned Single Judges of this Court in **Dilip Laxman Bobade v. The State of Maharashtra and another,** 1996 (4) Bom.C.R. 651 and **Smt. Indu Bhagya Natekar v. Bhagya Pandurang Natekar and others,** 1992 Cri.L.J. 601. In both the authorities the learned Judges have held that taking into consideration the other evidence, the offence under Section 494 was proved though there was no evidence regarding the performance of the essential rites under the Hindu Marriage Act. The authorities, therefore, do not apply

to the facts of the present case.

4. The entry at Exhibit 25 has been recorded in the marriage register by P.W.2 on the basis of the information given by P.W.3. Admittedly, the said entry is not countersigned by the present respondent/accused. Even otherwise, the information given by P.W.3 to P.W.2 and which is reflected in the register at Exhibit 25 is on the basis of hearsay evidence. P.W.3 admits that he is not the priest who had solemnised the marriage. The learned lower appellate Court has relied on the Judgment of the Apex Court in **Santi Deb Berma v. Smt. Kanchan Prava Devi,** A.I.R. 1991 S.C. 816 and has come to the conclusion that since there was no evidence regarding the performance of the essential rites, it could not be held that the respondent/accused had performed a second marriage during the subsistence of the first marriage. The learned lower appellate Court, therefore, gave benefit of doubt to the respondent and acquitted him.

5. With the assistance of the learned counsel I have perused the Judgment of the lower appellate Court and I find that there is no perversity whatsoever in the reasoning of the lower appellate Court which warrants interference in the present appeal against acquittal. The application for leave, therefore,

deserves to be dismissed.

6. Criminal Miscellaneous Application is, therefore, dismissed. Leave refused.

(P.V. HARDAS)
JUDGE.

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